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UNITED STATES OF AMERICA
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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,) CR No. 10-00351-ODW-7
15)
Plaintiff,) GOVERNMENT'S POSITION RE:
16) SENTENCING OF DEFENDANT CARLOS
v.) RIVERA
17)
CARLOS RIVERA,)
18)
Defendant.)
19

20 Plaintiff, by and through its attorney of record, the United
21 States Attorney for the Central District of California, hereby
22 files its position regarding sentencing of defendant Carlos
23 Rivera.
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1 The government's position is based upon the attached
2 Position, the files and records in this case, and upon such
3 further evidence and argument as may be presented at the
4 sentencing hearing.

5
6 DATED: February 25, 2013

Respectfully submitted,

7 ANDRÉ BIROTTE JR.
8 Acting United States Attorney

9 ROBERT E. DUGDALE
10 Assistant United States Attorney
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GOVERNMENT'S POSITION RE: SENTENCING

On December 12, 2012, defendant Rivera ("defendant"), was convicted on Counts One, Two, Five, Six, Ten, and Twenty-Three of the Thirty-Count Indictment. Count One charges 18 U.S.C. § 1962(d): Racketeer Influenced and Corrupt Organizations Conspiracy. Count Two charges 18 U.S.C. § 1962(c): Racketeer Influenced and Corrupt Organizations. Count Five charges 21 U.S.C. § 846: Conspiracy to Distribute and to Possess with Intent to Distribute at least 50 Grams of Actual Methamphetamine. Count Six charges 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C): Distribution of Methamphetamine. Count Ten charges 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii): Possess with Intent to Distribute Methamphetamine. Count Twenty-Three charges 18 U.S.C. § 922(g)(1): Felon in Possession of a Firearm and Ammunition.

Defendant Rivera is a member of the Black Angels gang. See PSR at ¶ 81. As a member of the Black Angels gang, defendant Rivera distributed methamphetamine and possessed a firearm. Id. On July 22, 2009, defendant Rivera, who was a convicted felon and on parole, obtained a loaded firearm, and attempted to flee from law enforcement officers when the officers apprehended defendant Rivera with the firearm. Id. at ¶ 82. On July 31, 2009, defendant Rivera sold approximately 4.4 grams of actual methamphetamine to narcotics customers in Ontario, California. Id. at ¶ 84. On August 6, 2009, defendant Rivera and co-defendant Medina possessed approximately 219 grams of actual methamphetamine to distribute to narcotics customers in Ontario, California. Id. at ¶¶ 85-86.

A. GUIDELINE CALCULATION

The United States Probation Office ("USPO") prepared the Presentence Report ("PSR"), which was disclosed to the parties on February 11, 2013. The PSR calculates the following Sentencing Guideline Range:

Base Offense Level:	34
Multiple Count Adjustment:	0
Criminal History Category:	IV
Guideline Range:	210-262 months
Supervised Release:	2-5 yrs [Counts 1, 2]
	5 yrs man. min. [Counts 5, 10]
	3 yrs man. min. [Count 6]
	1-3 yrs [Count 23]
Fine:	\$17,500 - \$175,000
Special Assessment:	\$600

The government concurs with the guideline range calculated by the USPO.

B. PROBATION OFFICER'S RECOMMENDATION

The USPO recommended a sentence of 180 months incarceration, with a term of 180 months on Counts One, Two, Five, Six, and Ten, and 120 months on Count Twenty-Three, with all such terms to be served concurrently. The USPO recommends that the defendant pay a special assessment of \$600, and that defendant be placed on supervised release for five years on Counts One, Two, Five, Six, and Ten, and three years on Count Twenty-Three, with all such terms to run concurrently. The USPO determined that the defendant is unable to pay a fine. See USPO Rec. Letter at 1. The USPO recommended a below-guideline sentence as the 180 month

1 sentence "is sufficient to reflect the seriousness of the
2 offense, serve the need for punishment and provide deterrence."

3 **C. GOVERNMENT'S SENTENCING RECOMMENDATION**

4 The government concurs with the USPO's recommendation
5 regarding the fine, special assessment, and period of supervised
6 release. However, the government recommends a sentence at the
7 low-end of the applicable guideline range, namely, a sentence of
8 210 months.¹

9 Defendant Rivera elected to proceed to trial, while many of
10 his co-defendants pled guilty. The government disagrees with the
11 USPO's assessment that a sentence of 180 months would not create
12 a disparity with similarly situated defendants who accepted
13 responsibility and pled guilty. See Disc. Rec. Letter at 4. In
14 particular, the government notes that defendant Hurtado, who was
15 one of the first members of the Black Angels gang to plead
16 guilty, was sentenced to 165 months imprisonment on Count One of
17 the Indictment. See PSR at ¶ 12. As described above, defendant
18 Rivera possessed a loaded firearm, as well as methamphetamine on
19 multiple occasions, including an instance where defendant
20 possessed approximately four ounces of methamphetamine to
21 distribute. Moreover, unlike defendant Hurtado, defendant Rivera
22 has not accepted responsibility. Yet the USPO has recommended a
23 sentence only 15 months higher than defendant Hurtado's sentence
24 for defendant Rivera. The government believes that such a
25 sentence would create a disparity, and urges the Court to impose
26 a sentence within the calculated guideline range.

27
28 ¹ The Court must impose a mandatory minimum sentence of 120
months on Counts Five and Ten of the Indictment.

1 The government believes that a substantial sentence is
2 warranted due to the seriousness of defendant's crimes.
3 Defendant Rivera possessed a large amount of methamphetamine for
4 further distribution, and, prior to that date, had previously
5 acquired a firearm and sold methamphetamine to two narcotics
6 customers. At the time of the offense, defendant Rivera was an
7 active member of the Black Angels gang, and he and co-defendant
8 Medina conducted narcotics activity at the home where their minor
9 children resided.

10 Defendant Rivera also appears to have little respect for the
11 law. In 2005, defendant Rivera possessed a shotgun and ran from
12 law enforcement officers. See PSR at ¶¶ 130-132. Defendant
13 Rivera received a probationary sentence for this conduct. Id.
14 In 2007, defendant Rivera, who had outstanding warrants, ran from
15 law enforcement officers. Id. at ¶¶ 133-135. Defendant Rivera
16 received a probationary sentence for this conduct. Id. In 2008,
17 defendant Rivera was convicted for Assault With a Deadly Weapon,
18 and received a two-year prison sentence. Id. at ¶¶ 136-137.
19 Defendant then engaged in the instant conduct while he was on
20 parole, and on the heels of his 2008 criminal conviction. Id.
21 Defendant also had numerous other law enforcement contacts
22 between 2003-2007. Id. at ¶¶ 140-146. Defendant has
23 demonstrated that he poses a danger to the community. He has
24 demonstrated repeated disrespect for the law and an unwillingness
25 to abide by the conditions of his release. He has not yet been
26 deterred from committing further crimes.

27 Based on the foregoing, the government respectfully requests
28 and recommends that the Court sentence defendant to 210 months

1 imprisonment, five years supervised release, and a special
2 assessment of \$600. This sentence takes into consideration the
3 18 U.S.C. § 3553(a) factors, and is not greater than necessary to
4 achieve those goals. It reflects the very serious nature of the
5 offense, promotes respect for the law, provides just punishment
6 for a serious offense, and affords adequate deterrence to
7 defendant's conduct in a manner that a lower sentence would not.